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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/529,575	04/14/2000	FRANCIS JAMES ROURKE	7042-R	9622

27752 7590 04/02/2007
THE PROCTER & GAMBLE COMPANY
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EXAMINER

ANDERSON, CATHARINE L

ART UNIT PAPER NUMBER

3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/02/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/529,575

Applicant(s)

ROURKE ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31, 32, 36, 43, 44, 46, 48, 52 and 53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31, 32, 36, 43, 44, 46, 48, 52 and 53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 2 January 2007 have been fully considered but they are not persuasive.

In response to applicant's argument that the absorbent article of Klofta is not a wearable article, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the requirements of the claim.

It is noted that the present claim discloses a 'disposable wearable article,' and therefore discloses an article that is capable both of being disposed of and being worn. The tissue paper of Klofta is fully capable of being disposed of, and also fully capable of being worn in some manner. Therefore, the article of Klofta fulfills the limitations of the claim.

It is further noted that the present claim also discloses an 'activatable delivery system,' which is a recitation of the functionality of the delivery system. Klofta disclose a lotion formulation that is 'activated' by the pressure of the tissue against the skin of the user, and therefore fulfills the limitations of the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 31, 32, 36, 41-44, 46, 48, 52, and 53 are rejected under 35 U.S.C. 102(e) as being anticipated by Klofta et al. (6,238,682).

With respect to claims 31, 32, and 36, Klofta discloses a disposable wearable article comprising a liquid permeable topsheet, as described in column 5, lines 49-55, and a delivery system for releasably containing and delivering a protease inhibitor, as described in column 13, lines 7-9 and column 15, line 67. The protease inhibitor is hexamidine, as disclosed in column 15, line 67, and is present in the range of 0.0001% to 30% by weight of the article, as disclosed in column 16, lines 66-67, and column 28, lines 7-9. The protease inhibitor comprises the identical chemical structure and concentration of the present invention, and therefore inherently exhibits the same IC_{50} of about 500 μ M and 20% reduction in substrate hydrolysis as the present invention.

With respect to claims 42 and 44, the delivery system is a skin care composition, as disclosed in column 4, lines 52-59, and the skin care composition comprises from 0.1% to 6% of the protease inhibitor, as disclosed in column 16, lines 66-67.

With respect to claim 43, the skin care composition is transferable to the skin of a wearer, as disclosed in column 4, lines 11-16.

With respect to claim 46, the protease inhibitor is an emulsion.

With respect to claim 48, the topsheet comprises the protease inhibitor disposed on a wearer-contacting surface, as disclosed in column 27, lines 39-52.

With respect to claims 52 and 53, it would have been an obvious matter of design choice for the topsheet to comprise regions that do not contain the skin care composition and have the skin care composition disposed in a plurality of stripes, since the applicant has not shown that this application of the skin care composition solves any stated problem or serves any particular purpose, and it appears the invention would perform equally well with the skin care composition disposed on all regions of the topsheet. *In re Dailey*, 140 USPQ 47.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CWA

cla

March 26, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

